



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1607

Introduced 2/19/2009, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

See Index

Amends the Environmental Protection Act. Provides that clean construction or demolition debris (CCDD), including general fill soil commingled with CCDD, is not waste if certain requirements are met. Provides that "general fill soil" is soil generated from construction or demolition activities and containing concentrations of chemicals at or below either certain Tiered Approach to Corrective Action Objective (TACO) Tier I exposure route values or, under certain circumstances, higher limits, such as acceptable detection limits or background concentrations. Provides that "restricted fill soil", including general fill soil commingled with restricted fill soil, is soil generated from construction or demolition activities that meets certain requirements. Makes changes to certain Sections of the Act concerning the use of CCDD. Requires the Illinois Environmental Protection Agency to issue permits for the use of CCDD and restricted fill soil as fill material. Provides that after January 1, 2010, a person may use CCDD and restricted fill soil as fill material, if certain requirements are met. Provides that the Agency may, without a permit, enter into intergovernmental agreements with units of State or local government to authorize the use of soil and CCDD. Provides for enforcement of certain CCDD-related violations by administrative citation. Provides civil penalties for certain violations. Makes other changes. Effective immediately.

LRB096 09569 JDS 19730 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.160, 21, 22.51, 31.1, and 42 and by adding
6 Sections 3.202, 3.442, 22.51a, and 22.54 as follows:

7 (415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

8 Sec. 3.160. Construction or demolition debris.

9 (a) "General construction or demolition debris" means
10 non-hazardous, uncontaminated materials resulting from the
11 construction, remodeling, repair, and demolition of utilities,
12 structures, and roads, limited to the following: bricks,
13 concrete, and other masonry materials; soil; rock; wood,
14 including non-hazardous painted, treated, and coated wood and
15 wood products; wall coverings; plaster; drywall; plumbing
16 fixtures; non-asbestos insulation; roofing shingles and other
17 roof coverings; reclaimed or other asphalt pavement; glass;
18 plastics that are not sealed in a manner that conceals waste;
19 electrical wiring and components containing no hazardous
20 substances; and piping or metals incidental to any of those
21 materials.

22 General construction or demolition debris does not include
23 general fill ~~uncontaminated~~ soil generated during

1 construction, remodeling, repair, and demolition of utilities,
2 structures, and roads provided the general fill ~~uncontaminated~~
3 soil is not commingled with any general construction or
4 demolition debris or other waste.

5 To the extent allowed by federal law, uncontaminated
6 concrete with protruding rebar shall be considered clean
7 construction or demolition debris and shall not be considered
8 "waste" if it is separated or processed and returned to the
9 economic mainstream in the form of raw materials or products
10 within 4 years of its generation, if it is not speculatively
11 accumulated and, if used as a fill material, it is used in
12 accordance with item (i) in subsection (b) of this Section.

13 (b) "Clean construction or demolition debris" ("CCDD")
14 means uncontaminated broken concrete without protruding metal
15 bars, bricks, rock, stone, or reclaimed or other asphalt
16 pavement (i) that is ~~, or soil~~ generated from construction or
17 demolition activities, and (ii) except as provided in
18 subsection (d) of Section 22.51 of this Act, does not contain
19 paint; however, clean construction or demolition debris
20 generated from the construction or demolition of a road may
21 contain pavement markings that conform to Illinois Department
22 of Transportation specifications.

23 CCDD also includes general fill soil generated from
24 construction or demolition activities that is mixed with broken
25 concrete without protruding metal bars, bricks, rock, stone, or
26 reclaimed asphalt pavement that is CCDD. CCDD Clean

1 ~~construction or demolition debris~~ does not include general fill
2 ~~uncontaminated~~ soil generated during construction, remodeling,
3 repair, and demolition of utilities, structures, and roads that
4 ~~provided the uncontaminated soil~~ is not commingled with any
5 CCDD ~~clean construction or demolition debris~~ or ~~other~~ waste.

6 To the extent allowed by federal law, CCDD ~~clean~~
7 ~~construction or demolition debris~~ shall not be considered
8 "waste" if it is (i) used as fill material outside of a setback
9 zone if (1) the fill is placed no higher than the highest point
10 of elevation existing prior to the filling immediately adjacent
11 to the fill area, and (2) it is ~~if~~ covered by sufficient
12 general fill ~~uncontaminated~~ soil to support vegetation within
13 30 days of the completion of filling or if covered by a road or
14 structure and, (3) if used as fill material in a current or
15 former quarry, mine, or other excavation, it is used in
16 accordance with the requirements of Sections 22.51 of this Act
17 and rules adopted thereunder, or (ii) separated or processed
18 and returned to the economic mainstream in the form of raw
19 materials or products, if it is not speculatively accumulated
20 and, if used as a fill material, it is used in accordance with
21 item (i), or (iii) solely broken concrete without protruding
22 metal bars used for erosion control, or (iv) generated from the
23 construction or demolition of a building, road, or other
24 structure and used to construct, on the site where the
25 construction or demolition has taken place, a manmade
26 functional structure not to exceed 20 feet above the highest

1 point of elevation of the property immediately adjacent to the
2 new manmade functional structure as that elevation existed
3 prior to the creation of that new structure, provided that the
4 structure shall be covered with sufficient soil materials to
5 sustain vegetation or by a road or structure, and further
6 provided that no such structure shall be constructed within a
7 home rule municipality with a population over 500,000 without
8 the consent of the municipality.

9 For purposes of this subsection (b), reclaimed or other
10 asphalt pavement shall not be considered speculatively
11 accumulated if: (i) it is not commingled with any other clean
12 construction or demolition debris or any waste; (ii) it is
13 returned to the economic mainstream in the form of raw
14 materials or products within 4 years after its generation;
15 (iii) at least 25% of the total amount present at a site during
16 a calendar year is transported off of the site during the next
17 calendar year; and (iv) if used as a fill material, it is used
18 in accordance with item (i) of the second paragraph of this
19 subsection (b).

20 (Source: P.A. 94-272, eff. 7-19-05; 95-121, eff. 8-13-07.)

21 (415 ILCS 5/3.202 new)

22 Sec. 3.202. General Fill Soil. For purposes of Sections
23 3.160, 21, and 22.51 of this Act, "General Fill Soil" means, to
24 the extent allowed by federal law, soil generated from
25 construction or demolition activities that (i) does not exceed

1 the most stringent Tier 1 exposure route values adopted by the
2 Board pursuant to Title XVII of this Act, as amended, (ii)
3 based upon past and current land uses and reasonable inquiry,
4 is not known or suspected to contain a regulated substance or
5 pesticide for which a Tier 1 exposure route has not been
6 determined, and (iii) does not contain waste, broken concrete,
7 bricks, or asphalt. For purposes of this definition, the most
8 stringent Tier 1 exposure route values adopted by the Board
9 pursuant to Title XVII of this Act shall be determined as
10 follows:

11 (a) Except as otherwise provided in subsections (b)
12 through (d) of this Section, the most stringent Tier 1
13 exposure route values are the lowest of the following
14 values for each chemical listed in 35 Ill. Adm. Code 742,
15 Appendix B, as amended:

16 (1) The Ingestion Exposure Route-Specific Value
17 for Soils listed in Table A of 35 Ill. Adm. Code 742,
18 Appendix B;

19 (2) The Inhalation Exposure Route-Specific Value
20 for Soils listed in Table A of 35 Ill. Adm. Code 742,
21 Appendix B;

22 (3) The Class I Soil Component of the Groundwater
23 Ingestion Exposure Route Value listed in Table A of 35
24 Ill. Adm. Code 742, Appendix B;

25 (4) The Construction Worker Ingestion Exposure
26 Route-Specific Value for Soils listed in Table B of 35

1 Ill. Adm. Code 742, Appendix B;

2 (5) The Construction Worker Inhalation Exposure
3 Route-Specific Value for Soils listed in Table B of 35
4 Ill. Adm. Code 742, Appendix B; and

5 (6) Indoor inhalation exposure route values
6 established by the Board in 35 Ill. Adm. Code 742.

7 Location and other designations, such as residential
8 and industrial/commercial designations, shall be ignored
9 when comparing the values identified in this subsection

10 (a). The lowest values shall be used regardless of
11 designation.

12 (b) For inorganic chemicals, either the leachable
13 value or the total value set forth below can be used as the
14 most stringent Tier 1 exposure route value.

15 (1) The leachable value for each inorganic
16 chemical is the Class I Soil Component of the
17 Groundwater Ingestion Exposure Route Value listed in
18 Table A of 35 Ill. Adm. Code 742, Appendix B, as
19 amended.

20 (2) The total value for each inorganic chemical is
21 the lowest of the following values, as amended:

22 (A) The Ingestion Exposure Route-Specific
23 Value for Soils listed in Table A of 35 Ill. Adm.
24 Code 742, Appendix B;

25 (B) The Inhalation Exposure Route-Specific
26 Value for Soils listed in Table A of 35 Ill. Adm.

1 Code 742, Appendix B;

2 (C) The Construction Worker Ingestion Exposure
3 Route-Specific Value for Soils listed in Table B of
4 35 Ill. Adm. Code 742, Appendix B;

5 (D) The Construction Worker Inhalation
6 Exposure Route-Specific Value for Soils listed in
7 Table B of 35 Ill. Adm. Code 742, Appendix B;

8 (E) The Class I pH Specific Soil Remediation
9 Objective listed in the column labeled "pH of 6.25
10 to 6.64" in Table C of 35 Ill. Adm. Code 742,
11 Appendix B, and;

12 (F) Indoor inhalation exposure route values
13 established by the Board in 35 Ill. Adm. Code 742.

14 Location and other designations, such as
15 residential or industrial/commercial designations,
16 shall be ignored when comparing the values identified
17 in this subdivision (b) (2) of this Section. The lowest
18 values shall be used for all soil regardless of its
19 designation.

20 (c) If a chemical's most stringent Tier 1 exposure
21 route value determined under subsections (a) and (b) of
22 this Section is less than the chemical's acceptable
23 detection limit (ADL) listed in 35 Ill. Adm. Code 742,
24 Appendix B, as amended, then the ADL shall serve as the
25 most stringent Tier 1 exposure route value.

26 (d) The following applies for soil used as fill

1 material or cover material in Chicago, a Metropolitan Area,
2 or a Non-Metropolitan Area as defined in Table H of 35 Ill.
3 Adm. Code 742, Appendix A:

4 (1) If a chemical's most stringent Tier 1 exposure
5 route value determined under subsections (a) through
6 (c) of this Section is less than the chemical's lowest
7 background concentration listed in Table H of 35 Ill.
8 Adm. Code 742, Appendix A, as amended, then the
9 chemical's lowest background concentration listed in
10 Table H shall serve as the most stringent Tier 1
11 exposure route value.

12 (2) For purposes of this subsection (d), the lowest
13 background concentration listed in Table H shall be
14 used, regardless of whether it is the background
15 concentration listed for Chicago, a Metropolitan Area,
16 or a Non-Metropolitan Area.

17 The most stringent Tier 1 exposure route values shall be
18 determined solely from the values listed in 35 Ill. Adm. Code
19 742, Appendix A and Appendix B as provided above. Except as
20 provided in subsection (d) of this Section, background
21 concentrations cannot be used. Other provisions of the Board's
22 rules, such as those pertaining to the use of engineered
23 barriers or institutional controls, cannot be used to exclude
24 or otherwise alter exposure routes or exposure route values for
25 purposes of determining the most stringent Tier 1 exposure
26 route.

1 The Agency shall maintain on its website a list of the most
2 stringent Tier 1 exposure route values adopted by the Board
3 pursuant to Title XVII of this Act, as amended.

4 To the extent allowed by federal law, general fill soil is
5 not a waste.

6 (415 ILCS 5/3.442 new)

7 Sec. 3.442. Restricted Fill Soil. For purposes of Section
8 22.51 of this Act, "restricted fill soil" means soil generated
9 from construction or demolition activities that (i) does not
10 exceed the Class I Soil Component of the Groundwater Ingestion
11 Exposure Route Values listed in Table A of 35 Ill. Adm. Code
12 742, Appendix B, as amended, (ii) based upon past and current
13 land uses and reasonable inquiry, is not known or suspected to
14 contain a regulated substance or pesticide that does not have a
15 Class I Soil Component of the Groundwater Ingestion Exposure
16 Route Value listed in Table A of 35 Ill. Adm. Code 742,
17 Appendix B, as amended, and (iii) does not contain waste.
18 General fill soil that is mixed with restricted fill soil shall
19 be considered restricted fill soil.

20 (415 ILCS 5/21) (from Ch. 111 1/2, par. 1021)

21 Sec. 21. Prohibited acts. No person shall:

22 (a) Cause or allow the open dumping of any waste.

23 (b) Abandon, dump, or deposit any waste upon the public
24 highways or other public property, except in a sanitary

1 landfill approved by the Agency pursuant to regulations adopted
2 by the Board.

3 (c) Abandon any vehicle in violation of the "Abandoned
4 Vehicles Amendment to the Illinois Vehicle Code", as enacted by
5 the 76th General Assembly.

6 (d) Conduct any waste-storage, waste-treatment, or
7 waste-disposal operation:

8 (1) without a permit granted by the Agency or in
9 violation of any conditions imposed by such permit,
10 including periodic reports and full access to adequate
11 records and the inspection of facilities, as may be
12 necessary to assure compliance with this Act and with
13 regulations and standards adopted thereunder; provided,
14 however, that, except for municipal solid waste landfill
15 units that receive waste on or after October 9, 1993, no
16 permit shall be required for (i) any person conducting a
17 waste-storage, waste-treatment, or waste-disposal
18 operation for wastes generated by such person's own
19 activities which are stored, treated, or disposed within
20 the site where such wastes are generated, or (ii) a
21 facility located in a county with a population over 700,000
22 as of January 1, 2000, operated and located in accordance
23 with Section 22.38 of this Act, and used exclusively for
24 the transfer, storage, or treatment of general
25 construction or demolition debris;

26 (2) in violation of any regulations or standards

1 adopted by the Board under this Act; or

2 (3) which receives waste after August 31, 1988, does
3 not have a permit issued by the Agency, and is (i) a
4 landfill used exclusively for the disposal of waste
5 generated at the site, (ii) a surface impoundment receiving
6 special waste not listed in an NPDES permit, (iii) a waste
7 pile in which the total volume of waste is greater than 100
8 cubic yards or the waste is stored for over one year, or
9 (iv) a land treatment facility receiving special waste
10 generated at the site; without giving notice of the
11 operation to the Agency by January 1, 1989, or 30 days
12 after the date on which the operation commences, whichever
13 is later, and every 3 years thereafter. The form for such
14 notification shall be specified by the Agency, and shall be
15 limited to information regarding: the name and address of
16 the location of the operation; the type of operation; the
17 types and amounts of waste stored, treated or disposed of
18 on an annual basis; the remaining capacity of the
19 operation; and the remaining expected life of the
20 operation.

21 Item (3) of this subsection (d) shall not apply to any
22 person engaged in agricultural activity who is disposing of a
23 substance that constitutes solid waste, if the substance was
24 acquired for use by that person on his own property, and the
25 substance is disposed of on his own property in accordance with
26 regulations or standards adopted by the Board.

1 This subsection (d) shall not apply to hazardous waste.

2 (e) Dispose, treat, store or abandon any waste, or
3 transport any waste into this State for disposal, treatment,
4 storage or abandonment, except at a site or facility which
5 meets the requirements of this Act and of regulations and
6 standards thereunder.

7 (f) Conduct any hazardous waste-storage, hazardous
8 waste-treatment or hazardous waste-disposal operation:

9 (1) without a RCRA permit for the site issued by the
10 Agency under subsection (d) of Section 39 of this Act, or
11 in violation of any condition imposed by such permit,
12 including periodic reports and full access to adequate
13 records and the inspection of facilities, as may be
14 necessary to assure compliance with this Act and with
15 regulations and standards adopted thereunder; or

16 (2) in violation of any regulations or standards
17 adopted by the Board under this Act; or

18 (3) in violation of any RCRA permit filing requirement
19 established under standards adopted by the Board under this
20 Act; or

21 (4) in violation of any order adopted by the Board
22 under this Act.

23 Notwithstanding the above, no RCRA permit shall be required
24 under this subsection or subsection (d) of Section 39 of this
25 Act for any person engaged in agricultural activity who is
26 disposing of a substance which has been identified as a

1 hazardous waste, and which has been designated by Board
2 regulations as being subject to this exception, if the
3 substance was acquired for use by that person on his own
4 property and the substance is disposed of on his own property
5 in accordance with regulations or standards adopted by the
6 Board.

7 (g) Conduct any hazardous waste-transportation operation:

8 (1) without registering with and obtaining a permit
9 from the Agency in accordance with the Uniform Program
10 implemented under subsection (1-5) of Section 22.2; or

11 (2) in violation of any regulations or standards
12 adopted by the Board under this Act.

13 (h) Conduct any hazardous waste-recycling or hazardous
14 waste-reclamation or hazardous waste-reuse operation in
15 violation of any regulations, standards or permit requirements
16 adopted by the Board under this Act.

17 (i) Conduct any process or engage in any act which produces
18 hazardous waste in violation of any regulations or standards
19 adopted by the Board under subsections (a) and (c) of Section
20 22.4 of this Act.

21 (j) Conduct any special waste transportation operation in
22 violation of any regulations, standards or permit requirements
23 adopted by the Board under this Act. However, sludge from a
24 water or sewage treatment plant owned and operated by a unit of
25 local government which (1) is subject to a sludge management
26 plan approved by the Agency or a permit granted by the Agency,

1 and (2) has been tested and determined not to be a hazardous
2 waste as required by applicable State and federal laws and
3 regulations, may be transported in this State without a special
4 waste hauling permit, and the preparation and carrying of a
5 manifest shall not be required for such sludge under the rules
6 of the Pollution Control Board. The unit of local government
7 which operates the treatment plant producing such sludge shall
8 file a semiannual report with the Agency identifying the volume
9 of such sludge transported during the reporting period, the
10 hauler of the sludge, and the disposal sites to which it was
11 transported. This subsection (j) shall not apply to hazardous
12 waste.

13 (k) Fail or refuse to pay any fee imposed under this Act.

14 (l) Locate a hazardous waste disposal site above an active
15 or inactive shaft or tunneled mine or within 2 miles of an
16 active fault in the earth's crust. In counties of population
17 less than 225,000 no hazardous waste disposal site shall be
18 located (1) within 1 1/2 miles of the corporate limits as
19 defined on June 30, 1978, of any municipality without the
20 approval of the governing body of the municipality in an
21 official action; or (2) within 1000 feet of an existing private
22 well or the existing source of a public water supply measured
23 from the boundary of the actual active permitted site and
24 excluding existing private wells on the property of the permit
25 applicant. The provisions of this subsection do not apply to
26 publicly-owned sewage works or the disposal or utilization of

1 sludge from publicly-owned sewage works.

2 (m) Transfer interest in any land which has been used as a
3 hazardous waste disposal site without written notification to
4 the Agency of the transfer and to the transferee of the
5 conditions imposed by the Agency upon its use under subsection
6 (g) of Section 39.

7 (n) Use any land which has been used as a hazardous waste
8 disposal site except in compliance with conditions imposed by
9 the Agency under subsection (g) of Section 39.

10 (o) Conduct a sanitary landfill operation which is required
11 to have a permit under subsection (d) of this Section, in a
12 manner which results in any of the following conditions:

13 (1) refuse in standing or flowing waters;

14 (2) leachate flows entering waters of the State;

15 (3) leachate flows exiting the landfill confines (as
16 determined by the boundaries established for the landfill
17 by a permit issued by the Agency);

18 (4) open burning of refuse in violation of Section 9 of
19 this Act;

20 (5) uncovered refuse remaining from any previous
21 operating day or at the conclusion of any operating day,
22 unless authorized by permit;

23 (6) failure to provide final cover within time limits
24 established by Board regulations;

25 (7) acceptance of wastes without necessary permits;

26 (8) scavenging as defined by Board regulations;

1 (9) deposition of refuse in any unpermitted portion of
2 the landfill;

3 (10) acceptance of a special waste without a required
4 manifest;

5 (11) failure to submit reports required by permits or
6 Board regulations;

7 (12) failure to collect and contain litter from the
8 site by the end of each operating day;

9 (13) failure to submit any cost estimate for the site
10 or any performance bond or other security for the site as
11 required by this Act or Board rules.

12 The prohibitions specified in this subsection (o) shall be
13 enforceable by the Agency either by administrative citation
14 under Section 31.1 of this Act or as otherwise provided by this
15 Act. The specific prohibitions in this subsection do not limit
16 the power of the Board to establish regulations or standards
17 applicable to sanitary landfills.

18 (p) In violation of subdivision (a) of this Section, cause
19 or allow the open dumping of any waste in a manner which
20 results in any of the following occurrences at the dump site:

21 (1) litter;

22 (2) scavenging;

23 (3) open burning;

24 (4) deposition of waste in standing or flowing waters;

25 (5) proliferation of disease vectors;

26 (6) standing or flowing liquid discharge from the dump

1 site;

2 (7) deposition of:

3 (i) general construction or demolition debris as
4 defined in Section 3.160(a) of this Act; or

5 (ii) clean construction or demolition debris as
6 defined in Section 3.160(b) of this Act.

7 The prohibitions specified in this subsection (p) shall be
8 enforceable by the Agency either by administrative citation
9 under Section 31.1 of this Act or as otherwise provided by this
10 Act. The specific prohibitions in this subsection do not limit
11 the power of the Board to establish regulations or standards
12 applicable to open dumping.

13 (q) Conduct a landscape waste composting operation without
14 an Agency permit, provided, however, that no permit shall be
15 required for any person:

16 (1) conducting a landscape waste composting operation
17 for landscape wastes generated by such person's own
18 activities which are stored, treated or disposed of within
19 the site where such wastes are generated; or

20 (2) applying landscape waste or composted landscape
21 waste at agronomic rates; or

22 (3) operating a landscape waste composting facility on
23 a farm, if the facility meets all of the following
24 criteria:

25 (A) the composting facility is operated by the
26 farmer on property on which the composting material is

1 utilized, and the composting facility constitutes no
2 more than 2% of the property's total acreage, except
3 that the Agency may allow a higher percentage for
4 individual sites where the owner or operator has
5 demonstrated to the Agency that the site's soil
6 characteristics or crop needs require a higher rate;

7 (B) the property on which the composting facility
8 is located, and any associated property on which the
9 compost is used, is principally and diligently devoted
10 to the production of agricultural crops and is not
11 owned, leased or otherwise controlled by any waste
12 hauler or generator of nonagricultural compost
13 materials, and the operator of the composting facility
14 is not an employee, partner, shareholder, or in any way
15 connected with or controlled by any such waste hauler
16 or generator;

17 (C) all compost generated by the composting
18 facility is applied at agronomic rates and used as
19 mulch, fertilizer or soil conditioner on land actually
20 farmed by the person operating the composting
21 facility, and the finished compost is not stored at the
22 composting site for a period longer than 18 months
23 prior to its application as mulch, fertilizer, or soil
24 conditioner;

25 (D) the owner or operator, by January 1, 1990 (or
26 the January 1 following commencement of operation,

1 whichever is later) and January 1 of each year
2 thereafter, (i) registers the site with the Agency,
3 (ii) reports to the Agency on the volume of composting
4 material received and used at the site, (iii) certifies
5 to the Agency that the site complies with the
6 requirements set forth in subparagraphs (A), (B) and
7 (C) of this paragraph (q) (3), and (iv) certifies to the
8 Agency that all composting material was placed more
9 than 200 feet from the nearest potable water supply
10 well, was placed outside the boundary of the 10-year
11 floodplain or on a part of the site that is
12 floodproofed, was placed at least 1/4 mile from the
13 nearest residence (other than a residence located on
14 the same property as the facility) and there are not
15 more than 10 occupied non-farm residences within 1/2
16 mile of the boundaries of the site on the date of
17 application, and was placed more than 5 feet above the
18 water table.

19 For the purposes of this subsection (q), "agronomic rates"
20 means the application of not more than 20 tons per acre per
21 year, except that the Agency may allow a higher rate for
22 individual sites where the owner or operator has demonstrated
23 to the Agency that the site's soil characteristics or crop
24 needs require a higher rate.

25 (r) Cause or allow the storage or disposal of coal
26 combustion waste unless:

1 (1) such waste is stored or disposed of at a site or
2 facility for which a permit has been obtained or is not
3 otherwise required under subsection (d) of this Section; or

4 (2) such waste is stored or disposed of as a part of
5 the design and reclamation of a site or facility which is
6 an abandoned mine site in accordance with the Abandoned
7 Mined Lands and Water Reclamation Act; or

8 (3) such waste is stored or disposed of at a site or
9 facility which is operating under NPDES and Subtitle D
10 permits issued by the Agency pursuant to regulations
11 adopted by the Board for mine-related water pollution and
12 permits issued pursuant to the Federal Surface Mining
13 Control and Reclamation Act of 1977 (P.L. 95-87) or the
14 rules and regulations thereunder or any law or rule or
15 regulation adopted by the State of Illinois pursuant
16 thereto, and the owner or operator of the facility agrees
17 to accept the waste; and either

18 (i) such waste is stored or disposed of in
19 accordance with requirements applicable to refuse
20 disposal under regulations adopted by the Board for
21 mine-related water pollution and pursuant to NPDES and
22 Subtitle D permits issued by the Agency under such
23 regulations; or

24 (ii) the owner or operator of the facility
25 demonstrates all of the following to the Agency, and
26 the facility is operated in accordance with the

1 demonstration as approved by the Agency: (1) the
2 disposal area will be covered in a manner that will
3 support continuous vegetation, (2) the facility will
4 be adequately protected from wind and water erosion,
5 (3) the pH will be maintained so as to prevent
6 excessive leaching of metal ions, and (4) adequate
7 containment or other measures will be provided to
8 protect surface water and groundwater from
9 contamination at levels prohibited by this Act, the
10 Illinois Groundwater Protection Act, or regulations
11 adopted pursuant thereto.

12 Notwithstanding any other provision of this Title, the
13 disposal of coal combustion waste pursuant to item (2) or (3)
14 of this subdivision (r) shall be exempt from the other
15 provisions of this Title V, and notwithstanding the provisions
16 of Title X of this Act, the Agency is authorized to grant
17 experimental permits which include provision for the disposal
18 of wastes from the combustion of coal and other materials
19 pursuant to items (2) and (3) of this subdivision (r).

20 (s) After April 1, 1989, offer for transportation,
21 transport, deliver, receive or accept special waste for which a
22 manifest is required, unless the manifest indicates that the
23 fee required under Section 22.8 of this Act has been paid.

24 (t) Cause or allow a lateral expansion of a municipal solid
25 waste landfill unit on or after October 9, 1993, without a
26 permit modification, granted by the Agency, that authorizes the

1 lateral expansion.

2 (u) Conduct any vegetable by-product treatment, storage,
3 disposal or transportation operation in violation of any
4 regulation, standards or permit requirements adopted by the
5 Board under this Act. However, no permit shall be required
6 under this Title V for the land application of vegetable
7 by-products conducted pursuant to Agency permit issued under
8 Title III of this Act to the generator of the vegetable
9 by-products. In addition, vegetable by-products may be
10 transported in this State without a special waste hauling
11 permit, and without the preparation and carrying of a manifest.

12 (v) (Blank).

13 (w) Conduct any generation, transportation, or recycling
14 of construction or demolition debris, clean or general, or
15 general fill ~~uncontaminated~~ soil or restricted fill soil that
16 is generated during construction, remodeling, repair, and
17 demolition of utilities, structures, and roads that is not
18 commingled with any waste, without the maintenance of
19 documentation identifying the hauler, generator, place of
20 origin of the debris or soil, the weight or volume of the
21 debris or soil, and the location, owner, and operator of the
22 facility where the debris or soil was transferred, disposed,
23 recycled, or treated. This documentation must be maintained by
24 the generator, transporter, or recycler for 3 years. This
25 subsection (w) shall not apply to (1) a permitted pollution
26 control facility that transfers or accepts construction or

1 demolition debris, clean or general, or general fill or
2 restricted fill ~~uncontaminated~~ soil for final disposal,
3 recycling, or treatment, (2) a public utility (as that term is
4 defined in the Public Utilities Act) or a municipal utility,
5 (3) the Illinois Department of Transportation, ~~or~~ (4) a
6 municipality or a county highway department, with the exception
7 of any municipality or county highway department located within
8 a county having a population of over 3,000,000 inhabitants or
9 located in a county that is contiguous to a county having a
10 population of over 3,000,000 inhabitants, or (5) the Illinois
11 State Toll Highway Authority; but it shall apply to an entity
12 that contracts with a public utility, a municipal utility, the
13 Illinois Department of Transportation, the Illinois State Toll
14 Highway Authority or a municipality or a county highway
15 department. The terms "generation" and "recycling" as used in
16 this subsection do not apply to clean construction or
17 demolition debris when (i) used as fill material below grade
18 outside of a setback zone if covered by sufficient general fill
19 ~~uncontaminated~~ soil to support vegetation within 30 days of the
20 completion of filling or if covered by a road or structure,
21 (ii) solely broken concrete without protruding metal bars is
22 used for erosion control, or (iii) milled asphalt or crushed
23 concrete is used as aggregate in construction of the shoulder
24 of a roadway. The terms "generation" and "recycling", as used
25 in this subsection, do not apply to general fill ~~uncontaminated~~
26 soil that is not commingled with any waste when (i) used as

1 fill material below grade or contoured to grade, or (ii) used
2 at the site of generation.

3 (Source: P.A. 93-179, eff. 7-11-03; 94-94, eff. 7-1-05.)

4 (415 ILCS 5/22.51)

5 Sec. 22.51. Clean Construction or Demolition Debris Fill
6 Operations.

7 This Section applies to persons using clean construction or
8 demolition debris as fill material in a current or former
9 quarry, mine, or other excavation. It also applies to persons
10 authorized under this Section to use restricted fill soil or
11 general fill soil as fill material in a current or former
12 quarry, mine, or other excavation.

13 (a) No person shall conduct any CCDD ~~clean construction or~~
14 ~~demolition debris~~ fill operation in violation of this Act or
15 any regulations or standards adopted by the Board.

16 (b) (1) (A) Beginning July 19, 2005 ~~30 days after the~~
17 ~~effective date of this amendatory Act of the 94th General~~
18 ~~Assembly~~ but prior to January 1, 2010 ~~July 1, 2008~~, no person
19 shall use CCDD ~~clean construction or demolition debris~~ as fill
20 material in a current or former quarry, mine, or other
21 excavation, unless they have applied for an interim
22 authorization from the Agency for the CCDD ~~clean construction~~
23 ~~or demolition debris~~ fill operation.

24 (B) The Agency shall approve an interim authorization upon
25 its receipt of a written application for the interim

1 authorization that is signed by the site owner and the site
2 operator, or their duly authorized agent, and that contains the
3 following information: (i) the location of the site where the
4 CCDD ~~clean construction or demolition debris~~ fill operation is
5 taking place, (ii) the name and address of the site owner,
6 (iii) the name and address of the site operator, and (iv) the
7 types and amounts of CCDD ~~clean construction or demolition~~
8 ~~debris~~ being used as fill material at the site.

9 (C) The Agency may deny an interim authorization if the
10 site owner or the site operator, or their duly authorized
11 agent, fails to provide to the Agency the information listed in
12 subsection (b) (1) (B) of this Section. Any denial of an interim
13 authorization shall be subject to appeal to the Board in
14 accordance with the procedures of Section 40 of this Act.

15 (D) No person shall use CCDD ~~clean construction or~~
16 ~~demolition debris~~ as fill material in a current or former
17 quarry, mine, or other excavation for which the Agency has
18 denied interim authorization under subsection (b) (1) (C) of
19 this Section. The Board may stay the prohibition of this
20 subsection (D) during the pendency of an appeal of the Agency's
21 denial of the interim authorization brought under subsection
22 (b) (1) (C) of this Section.

23 (2) Beginning September 1, 2006, owners and operators of
24 CCDD ~~clean construction or demolition debris~~ fill operations
25 shall, in accordance with a schedule prescribed by the Agency,
26 submit to the Agency applications for the permits required

1 under this Section. The Agency shall notify owners and
2 operators in writing of the due date for their permit
3 application. The due date shall be no less than 90 days after
4 the date of the Agency's written notification. Owners and
5 operators who do not receive a written notification from the
6 Agency by October 1, 2007, shall submit a permit application to
7 the Agency by January 1, 2008. The interim authorization of
8 owners and operators who fail to submit a permit application to
9 the Agency by the permit application's due date shall terminate
10 on (i) the due date established by the Agency if the owner or
11 operator received a written notification from the Agency prior
12 to October 1, 2007, or (ii) or January 1, 2008, if the owner or
13 operator did not receive a written notification from the Agency
14 by October 1, 2007.

15 (3) On and after January 1, 2010 ~~July 1, 2008~~, no person
16 shall use CCDD ~~clean construction or demolition debris~~ as fill
17 material in a current or former quarry, mine, or other
18 excavation (i) without a permit granted by the Agency for the
19 clean construction or demolition debris fill operation or in
20 violation of any conditions imposed by such permit, including
21 periodic reports and full access to adequate records and the
22 inspection of facilities, as may be necessary to assure
23 compliance with this Act and with Board regulations and
24 standards adopted under this Act; or (ii) in violation of any
25 regulations or standards adopted by the Board under this Act.

26 (4) This subsection (b) does not apply to:

1 (A) the use of CCDD ~~clean construction or demolition~~
2 ~~debris~~ as fill material in a current or former quarry,
3 mine, or other excavation located on the site where the
4 clean construction or demolition debris was generated;

5 (B) the use of CCDD ~~clean construction or demolition~~
6 ~~debris~~ as fill material in an excavation other than a
7 current or former quarry or mine if this use complies with
8 Illinois Department of Transportation specifications; or

9 (C) current or former quarries, mines, and other
10 excavations that do not use CCDD ~~clean construction or~~
11 ~~demolition debris~~ as fill material.

12 (c) In accordance with Title VII of this Act, the Board may
13 adopt regulations to promote the purposes of this Section. The
14 Agency shall consult with the mining and construction
15 industries during the development of any regulations to promote
16 the purposes of this Section.

17 (1) No later than December 15, 2005, the Agency shall
18 propose to the Board, and no later than September 1, 2006,
19 the Board shall adopt, regulations for the use of CCDD
20 ~~clean construction or demolition debris~~ as fill material in
21 current and former quarries, mines, and other excavations.
22 Such regulations shall include, but shall not be limited
23 to, standards for CCDD ~~clean construction or demolition~~
24 ~~debris~~ fill operations and the submission and review of
25 permits required under this Section.

26 (2) Until the Board adopts rules under subsection

1 (c) (1) of this Section, all persons using clean
2 construction or demolition debris as fill material in a
3 current or former quarry, mine, or other excavation shall:

4 (A) Assure that only CCDD ~~clean construction or~~
5 ~~demolition debris~~ is being used as fill material by
6 screening each truckload of material received using a
7 device approved by the Agency that detects volatile
8 organic compounds. Such devices may include, but are
9 not limited to, photo ionization detectors. All
10 screening devices shall be operated and maintained in
11 accordance with manufacturer's specifications.
12 Unacceptable fill material shall be rejected from the
13 site; and

14 (B) Retain for a minimum of 3 years the following
15 information:

16 (i) The name of the hauler, the name of the
17 generator, and place of origin of the debris or
18 soil;

19 (ii) The approximate weight or volume of the
20 debris or soil; and

21 (iii) The date the debris or soil was received.

22 (d) To the extent allowed by federal law, the Agency shall,
23 in a permit or a permit modification granted under this
24 Section, and in accordance with Sections 39 and 40 of this Act,
25 authorize the use of restricted fill soil and clean
26 construction or demolition debris as fill material at a clean

1 construction or demolition debris fill operation if the
2 requirements of this subsection (d) are met. To the extent
3 allowed by federal law, restricted fill soil and painted clean
4 construction or demolition debris used as fill material in
5 accordance with the permit and this Section are not waste.

6 (1) Before restricted fill soil is used as fill
7 material at the clean construction or demolition debris
8 fill operation: (i) a land use restriction that restricts
9 property use to industrial or commercial uses must be
10 recorded in the chain of title for the property on which
11 the clean construction or demolition debris fill operation
12 is located and (ii) proof of the recording must be
13 submitted to the Agency. Upon closure of the clean
14 construction or demolition debris fill operation, the land
15 use restriction may be removed if the site is entered into
16 the Agency's Site Remediation Program and, pursuant to
17 procedures adopted by the Board, the site is demonstrated
18 to meet the Tier 1 residential remediation objectives
19 adopted by the Board pursuant to Title XVII of this Act.

20 (2) The owner or operator of the clean construction or
21 demolition debris fill operation must develop and
22 implement a closure and post-closure care plan that
23 includes, but is not limited to, covering all restricted
24 fill soil, clean construction or demolition debris, and
25 painted broken concrete without protruding metal bars,
26 bricks, rock, stone, or reclaimed asphalt pavement that is

1 generated from construction or demolition activities with
2 a minimum of 10 feet of general fill soil, or an engineered
3 barrier approved by the Agency in a permit granted under
4 this Section, within 60 days after completion of filling.
5 The closure and post-closure care plan shall also require
6 that any occupied buildings constructed on site shall have
7 appropriate indoor inhalation pathway barriers installed,
8 as approved by the Agency in accordance with Board rules.

9 (3) Painted clean construction or demolition debris
10 shall not be used as fill material unless chemical analysis
11 demonstrates that the paint does not exceed the most
12 stringent Tier 1 exposure route values adopted by the Board
13 pursuant to Title XVII of this Act as determined under
14 Section 3.508 of this Act. Chemical analysis is not
15 required for pavement markings that conform to Illinois
16 Department of Transportation specifications.

17 (4) The owner or operator of the CCDD fill operation
18 must develop and implement a Testing and Sampling Plan
19 which ensures that the restricted fill soil, when placed in
20 the fill site, will meet the standards relevant to Class I
21 Groundwater, found at 35 Ill. Adm. Code 741, Appendix B,
22 Table A. The Testing and Sampling Plan shall meet the
23 following requirements:

24 (i) Screening of placed soil with an X-ray
25 Fluorescence Spectroscopy instrument, in
26 accordance with procedures approved by the Agency

1 in the permit. The frequency of analysis shall not
2 be less than one X-ray Fluorescence Spectroscopy
3 reading for every 500 cubic yards of fill placed on
4 the site. Any area of fill where an X-ray
5 Fluorescence Spectroscopy reading indicates that
6 the fill may exceed restricted fill standards
7 requires laboratory testing for the full list of
8 TACO parameters. Soil that exceeds restricted fill
9 standards based on laboratory testing must be
10 removed and disposed of at a landfill.

11 (ii) Representative soil samples must also be
12 collected for every 2,500 cubic yards of soil
13 placed on site and tested for the full list of TACO
14 parameters. For collection and testing purposes,
15 random representative soil samples may be combined
16 into a composite sample and statistically
17 analyzed; however, no more than 5 aliquots may be
18 combined into a composite sample. Soil which
19 exceeds restricted fill standards must be removed
20 and disposed of at a landfill.

21 (iii) Testing and sampling in accordance with
22 the requirements of 35 Ill. Adm. Code 742 and "Test
23 Methods for Evaluating Solid Waste
24 Physical/Chemical Methods", USEPA Publication No.
25 SW-846, as amended.

26 (5) The owner or operator of the CCDD fill operation

1 must develop and implement a Receipt Control and Screening
2 Plan which shall meet all of the following requirements:

3 (i) Chemical analysis of paint demonstrating
4 that it does not exceed the most stringent Tier 1
5 exposure route values adopted by the Board under
6 Title XVII of this Act. Chemical analysis is not
7 required for pavement markings that conform to
8 Illinois Department of Transportation
9 specifications.

10 (ii) A visual inspection of the material to
11 confirm that it does not contain material other
12 than restricted fill soil or clean construction or
13 demolition debris.

14 (iii) Screening of the soil with a photo
15 ionization detector or a flame ionization detector
16 to confirm that it is consistent with any chemical
17 analysis demonstrating that the soil is restricted
18 fill soil.

19 (iv) Confirmation that the soil was not
20 removed from a site as a part of the cleanup or
21 removal of contaminants, including but not limited
22 to activities conducted under the Comprehensive
23 Environmental Response, Compensation, and
24 Liability Act of 1980, as amended; RCRA Closure or
25 Corrective Action; or an Agency remediation
26 program, such as the Leaking Underground Storage

1 Tank Program or Site Remediation Program, with the
2 exception of sites subject to Section 58.16 of this
3 Act.

4 (v) Documentation from the owner of the site
5 from which the soil was removed that the site had
6 never been developed for commercial or industrial
7 use; or a certification from a licensed
8 professional engineer that the soil meets
9 restricted fill standards.

10 (vi) Documenting the activities conducted
11 under the Receipt Control and Screening Plan.
12 Documentation of any chemical analysis performed
13 must include, but is not limited to, a copy of the
14 lab analysis on letterhead of the laboratory
15 conducting the analysis and signed by the person
16 that conducted the analysis and signed by his or
17 her supervisor.

18 ~~(d) This Section applies only to clean construction or~~
19 ~~demolition debris that is not considered "waste" as provided in~~
20 ~~Section 3.160 of this Act.~~

21 (e) For purposes of this Section ~~a clean construction or~~
22 ~~demolition debris fill operation:~~

23 (1) The term "operator" means a person responsible for
24 the operation and maintenance of a CCDD ~~clean construction~~
25 ~~or demolition debris~~ fill operation.

26 (2) The term "owner" means a person who has any direct

1 or indirect interest in a CCDD ~~clean construction or~~
2 ~~demolition debris~~ fill operation or in land on which a
3 person operates and maintains a CCDD ~~clean construction or~~
4 ~~demolition debris~~ fill operation. A "direct or indirect
5 interest" does not include the ownership of publicly traded
6 stock. The "owner" is the "operator" if there is no other
7 person who is operating and maintaining a CCDD ~~clean~~
8 ~~construction or demolition debris~~ fill operation.

9 (3) The term "clean construction or demolition debris
10 fill operation" means a current or former quarry, mine, or
11 other excavation where clean construction or demolition
12 debris is used as fill material.

13 (4) The term "other excavation" does not include holes,
14 trenches, or similar earth removal created as part of
15 normal construction, removal, or maintenance of a
16 structure, utility, or transportation infrastructure.

17 (f) Except as provided in subdivision (d)(2) of this
18 Section, owners and operators of clean construction or
19 demolition debris fill operations must develop and implement:

20 (1) A Receipt Control Plan that contains the elements
21 required for restricted fill operations under subdivision
22 (d)(5) of Section 22.51 of this Act, as those requirements
23 would pertain to general fill.

24 (2) A testing and sampling plan which ensures that the
25 CCDD fill when placed in the fill site will meet the
26 standards of general fill soil. At a minimum,

1 representative soil samples must be collected for every
2 2,500 cubic yards of soil placed on site and tested for the
3 full list of TACO parameters. For collection and testing
4 purposes, random representative soil samples may be
5 combined into a composite sample and statistically
6 analyzed; however, no more than 5 aliquots may be combined
7 into a composite sample. Soil that exceeds general fill
8 standards must be removed to a restricted fill operation if
9 it meets restricted fill standards, or it must be disposed
10 of at a landfill.

11 (3) A closure and post-closure care plan that includes,
12 but is not limited to, covering all clean construction or
13 demolition debris with at least 3 feet of general fill soil
14 or a road, pavement, or structure within 30 days after
15 completion of the filling.

16 (g) Owners and operators of clean construction or
17 demolition debris fill operations must maintain all
18 documentation required under this Section until at least 3
19 years after the date of receipt of the clean construction or
20 demolition debris or soil, except that documentation relating
21 to an appeal, litigation, or other disputed claim must be
22 maintained until at least 3 years after the date of the final
23 disposition of the appeal, litigation, or other disputed claim.
24 Copies of the documentation must be made available to the
25 Agency for inspection and copying during normal business hours.

26 Chemical analysis conducted under this Section must be

1 conducted in accordance with the requirements of 35 Ill. Adm.
2 Code 742 and "Test Methods for Evaluating Solid Waste,
3 Physical/Chemical Methods", USEPA Publication No. SW-846, as
4 amended.

5 (h) Except as provided in this Section for restricted fill
6 soil, no person shall use soil other than general fill soil as
7 fill material at a clean construction or demolition debris fill
8 operation.

9 (i) No person shall use, or cause or allow the use of, any
10 site on which a land use restriction has been recorded under
11 subdivision (d)(1) of this Section in a manner that is
12 inconsistent with the land use restriction unless the land use
13 restriction has been removed in accordance with subdivision
14 (d)(1) of this Section.

15 (j) No person shall perform an activity that disturbs the
16 barrier required under subdivision (d)(2) of this Section
17 unless the site is entered into the Agency's Site Remediation
18 Program and the activity is approved by the Agency as
19 consistent with the requirements of 35 Ill. Adm. Code 742.

20 (k) No person shall use restricted fill soil or clean
21 construction or demolition debris as fill material at a clean
22 construction or demolition debris fill operation unless
23 authorized by the Agency in a permit granted under this
24 Section. No person shall use restricted fill soil or clean
25 construction or demolition debris as fill material at a clean
26 construction or demolition debris fill operation except in

1 accordance with a permit granted under this Section and
2 Sections 39 and 40 of this Act.

3 (1) No person other than the State of Illinois, its
4 agencies and institutions, or a unit of local government shall
5 use restricted fill soil as fill material in a current or
6 former quarry, mine, or other excavation unless that person has
7 posted with the Agency a performance bond or other security for
8 the purpose of insuring (i) closure of the site in accordance
9 with this Section and its regulations and (ii) completion of
10 any corrective action remedies required under this Act and its
11 regulations. The bond amount shall be directly related to the
12 design and volume of the site. The cost estimate shall be
13 calculated using a period of time not to exceed 30 years beyond
14 closure and may be a shorter period as may be approved or
15 required by the Agency. Cost estimates shall be in current
16 dollars. Any moneys forfeited to the State from any performance
17 bond or other security required under this subsection shall be
18 placed in the Landfill Closure and Post-Closure Fund and shall,
19 upon approval by the Governor and the Director, be used by and
20 under the direction of the Agency for the purposes for which
21 such performance bond or other security was issued.

22 The Agency is authorized to enter into such contracts and
23 agreements as it may deem necessary to carry out the purposes
24 of this Section. Neither the State, nor the Director, nor any
25 State employee is liable for any damages or injuries arising
26 out of or resulting from any action taken under this Section.

1 Nothing in this Section shall bar a cause of action by the
2 State for any other penalty or relief provided by this Act or
3 any other law.

4 The Agency has the authority to approve or disapprove any
5 performance bond or other security posted under this subsection
6 (l). Any person whose performance bond or other security is
7 disapproved by the Agency may contest the disapproval as a
8 permit denial appeal under Section 40 of this Act.

9 (m) The Agency may establish the procedures it deems
10 necessary to implement and execute its responsibilities under
11 this Section.

12 (Source: P.A. 94-272, eff. 7-19-05; 94-725, eff. 6-1-06.)

13 (415 ILCS 5/22.51a new)

14 Sec. 22.51a. General Fill Soil Fill Operations. This
15 Section applies to all persons using soil as fill material in a
16 current or former quarry, mine, or other excavation. Other
17 excavation does not include holes, trenches, or similar earth
18 removal created as part of normal construction, removal, or
19 maintenance of a structure, utility, or transportation
20 infrastructure.

21 (a) No person shall use general fill soil as fill material
22 in a current or former quarry, mine, or other excavation unless
23 the requirements of this Section are met.

24 (b) Persons using general fill soil as fill material in a
25 current or former quarry, mine, or other excavation after

1 January 1, 2010 shall notify the Agency of their intent to use
2 general fill soil.

3 (c) Persons using general fill soil as fill material in a
4 current or former quarry, mine, or other excavation must
5 develop and implement:

6 (1) A Receipt Control Plan that contains the elements
7 required for restricted fill soil under subdivision (d) (5)
8 of Section 22.51 of this Act, as those requirements would
9 pertain to general fill soil.

10 (2) A testing and sampling plan that ensures that the
11 CCDD fill when placed in the fill site will meet the
12 standards of general fill soil. At a minimum,
13 representative soil samples must be collected for every
14 5,000 cubic yards of soil placed on site and tested for the
15 full list of TACO parameters. For collection and testing
16 purposes, random representative soil samples may be
17 combined into a composite sample and statistically
18 analyzed so long as no more than 5 aliquots may be combined
19 into a composite sample. Soil that exceeds general fill
20 standards must be removed and properly disposed of at
21 either a restricted fill site or a landfill.

22 (3) Persons using general fill soil as fill material in
23 a current or former quarry, mine, or other excavation must
24 maintain all documentation required under this Section
25 until at least 3 years after the date of receipt of the
26 soil, except that documentation relating to an appeal,

1 litigation, or other disputed claim must be maintained
2 until at least 3 years after the date of the final
3 disposition of the appeal, litigation, or other disputed
4 claim. Copies of the documentation must be made available
5 to the Agency for inspection and copying during normal
6 business hours.

7 Chemical analysis conducted under this Section must be
8 conducted in accordance with the requirements of 35 Ill. Adm.
9 Code 742 and "Test Methods for Evaluating Solid Waste,
10 Physical/Chemical Methods", USEPA Publication No. SW-846, as
11 amended.

12 (415 ILCS 5/22.54 new)

13 Sec. 22.54. Intergovernmental agreements. Notwithstanding
14 any other provisions of this Act, to the extent allowed by
15 federal law the Agency may, through intergovernmental
16 agreements, authorize reuse of soil and clean construction or
17 demolition debris by State agencies, or by counties with a
18 population of 3,000,000 or more, or by units of local
19 government located in a county with a population of 3,000,000
20 or more, as long as the reuse is protective of human health and
21 the environment.

22 To the extent allowed by federal law, no permit is required
23 for the reuse of clean construction or demolition debris or
24 soil under agreements entered into under this Section. To the
25 extent allowed by federal law, clean construction or demolition

1 debris and soil reused under agreements entered into under this
2 Section are not waste. Intergovernmental Agreements are not
3 required for the purpose of reuse of general fill soil or for
4 the purpose of reuse of soil or clean construction demolition
5 debris on the site from which it was removed.

6 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

7 Sec. 31.1. Administrative citation.

8 (a) The prohibitions specified in subsections (o) and (p)
9 of Section 21 and in Section 22.51 of this Act shall be
10 enforceable either by administrative citation under this
11 Section or as otherwise provided by this Act.

12 (b) Whenever Agency personnel or personnel of a unit of
13 local government to which the Agency has delegated its
14 functions pursuant to subsection (r) of Section 4 of this Act,
15 on the basis of direct observation, determine that any person
16 has violated any provision of subsection (o) or (p) of Section
17 21 or any provision of Section 22.51 of this Act, the Agency or
18 such unit of local government may issue and serve an
19 administrative citation upon such person within not more than
20 60 days after the date of the observed violation. Each such
21 citation issued shall be served upon the person named therein
22 or such person's authorized agent for service of process, and
23 shall include the following information:

24 (1) a statement specifying the provisions of
25 subsection (o) or (p) of Section 21 or the provisions of

1 Section 22.51 of which the person was observed to be in
2 violation;

3 (2) a copy of the inspection report in which the Agency
4 or local government recorded the violation, which report
5 shall include the date and time of inspection, and weather
6 conditions prevailing during the inspection;

7 (3) the penalty imposed by subdivision (b) (4) ~~or~~
8 (b) (4-5), or (b) (6) of Section 42 for such violation;

9 (4) instructions for contesting the administrative
10 citation findings pursuant to this Section, including
11 notification that the person has 35 days within which to
12 file a petition for review before the Board to contest the
13 administrative citation; and

14 (5) an affidavit by the personnel observing the
15 violation, attesting to their material actions and
16 observations.

17 (c) The Agency or unit of local government shall file a
18 copy of each administrative citation served under subsection
19 (b) of this Section with the Board no later than 10 days after
20 the date of service.

21 (d) (1) If the person named in the administrative citation
22 fails to petition the Board for review within 35 days from the
23 date of service, the Board shall adopt a final order, which
24 shall include the administrative citation and findings of
25 violation as alleged in the citation, and shall impose the
26 penalty specified in subdivision (b) (4) ~~or~~ (b) (4-5), or (b) (6)

1 of Section 42.

2 (2) If a petition for review is filed before the Board to
3 contest an administrative citation issued under subsection (b)
4 of this Section, the Agency or unit of local government shall
5 appear as a complainant at a hearing before the Board to be
6 conducted pursuant to Section 32 of this Act at a time not less
7 than 21 days after notice of such hearing has been sent by the
8 Board to the Agency or unit of local government and the person
9 named in the citation. In such hearings, the burden of proof
10 shall be on the Agency or unit of local government. If, based
11 on the record, the Board finds that the alleged violation
12 occurred, it shall adopt a final order which shall include the
13 administrative citation and findings of violation as alleged in
14 the citation, and shall impose the penalty specified in
15 subdivision (b) (4), ~~or (b) (4-5)~~, or (b) (6) of Section 42.
16 However, if the Board finds that the person appealing the
17 citation has shown that the violation resulted from
18 uncontrollable circumstances, the Board shall adopt a final
19 order which makes no finding of violation and which imposes no
20 penalty.

21 (e) Sections 10-25 through 10-60 of the Illinois
22 Administrative Procedure Act shall not apply to any
23 administrative citation issued under subsection (b) of this
24 Section.

25 (f) The other provisions of this Section shall not apply to
26 a sanitary landfill operated by a unit of local government

1 solely for the purpose of disposing of water and sewage
2 treatment plant sludges, including necessary stabilizing
3 materials.

4 (g) All final orders issued and entered by the Board
5 pursuant to this Section shall be enforceable by injunction,
6 mandamus or other appropriate remedy, in accordance with
7 Section 42 of this Act.

8 (Source: P.A. 92-16, eff. 6-28-01.)

9 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

10 Sec. 42. Civil penalties.

11 (a) Except as provided in this Section, any person that
12 violates any provision of this Act or any regulation adopted by
13 the Board, or any permit or term or condition thereof, or that
14 violates any order of the Board pursuant to this Act, shall be
15 liable for a civil penalty of not to exceed \$50,000 for the
16 violation and an additional civil penalty of not to exceed
17 \$10,000 for each day during which the violation continues; such
18 penalties may, upon order of the Board or a court of competent
19 jurisdiction, be made payable to the Environmental Protection
20 Trust Fund, to be used in accordance with the provisions of the
21 Environmental Protection Trust Fund Act.

22 (b) Notwithstanding the provisions of subsection (a) of
23 this Section:

24 (1) Any person that violates Section 12(f) of this Act
25 or any NPDES permit or term or condition thereof, or any

1 filing requirement, regulation or order relating to the
2 NPDES permit program, shall be liable to a civil penalty of
3 not to exceed \$10,000 per day of violation.

4 (2) Any person that violates Section 12(g) of this Act
5 or any UIC permit or term or condition thereof, or any
6 filing requirement, regulation or order relating to the
7 State UIC program for all wells, except Class II wells as
8 defined by the Board under this Act, shall be liable to a
9 civil penalty not to exceed \$2,500 per day of violation;
10 provided, however, that any person who commits such
11 violations relating to the State UIC program for Class II
12 wells, as defined by the Board under this Act, shall be
13 liable to a civil penalty of not to exceed \$10,000 for the
14 violation and an additional civil penalty of not to exceed
15 \$1,000 for each day during which the violation continues.

16 (3) Any person that violates Sections 21(f), 21(g),
17 21(h) or 21(i) of this Act, or any RCRA permit or term or
18 condition thereof, or any filing requirement, regulation
19 or order relating to the State RCRA program, shall be
20 liable to a civil penalty of not to exceed \$25,000 per day
21 of violation.

22 (4) In an administrative citation action under Section
23 31.1 of this Act, any person found to have violated any
24 provision of subsection (o) of Section 21 of this Act shall
25 pay a civil penalty of \$500 for each violation of each such
26 provision, plus any hearing costs incurred by the Board and

1 the Agency. Such penalties shall be made payable to the
2 Environmental Protection Trust Fund, to be used in
3 accordance with the provisions of the Environmental
4 Protection Trust Fund Act; except that if a unit of local
5 government issued the administrative citation, 50% of the
6 civil penalty shall be payable to the unit of local
7 government.

8 (4-5) In an administrative citation action under
9 Section 31.1 of this Act, any person found to have violated
10 any provision of subsection (p) of Section 21 of this Act
11 shall pay a civil penalty of \$1,500 for each violation of
12 each such provision, plus any hearing costs incurred by the
13 Board and the Agency, except that the civil penalty amount
14 shall be \$3,000 for each violation of any provision of
15 subsection (p) of Section 21 that is the person's second or
16 subsequent adjudication violation of that provision. The
17 penalties shall be deposited into the Environmental
18 Protection Trust Fund, to be used in accordance with the
19 provisions of the Environmental Protection Trust Fund Act;
20 except that if a unit of local government issued the
21 administrative citation, 50% of the civil penalty shall be
22 payable to the unit of local government.

23 (5) Any person who violates subsection 6 of Section
24 39.5 of this Act or any CAAPP permit, or term or condition
25 thereof, or any fee or filing requirement, or any duty to
26 allow or carry out inspection, entry or monitoring

1 activities, or any regulation or order relating to the
2 CAAPP shall be liable for a civil penalty not to exceed
3 \$10,000 per day of violation.

4 (6) In an administrative citation action under Section
5 31.1 of this Act, any person without a permit issued under
6 Section 22.51 of this Act that is found to have violated
7 any provision of Section 22.51 of this Act shall pay a
8 civil penalty of \$1,500 for each violation of each
9 provision, plus any hearing costs incurred by the Board and
10 the Agency, except that the civil penalty amount shall be
11 \$3,000 for each violation of any provision of Section 22.51
12 that is the person's second or subsequent adjudicated
13 violation of that provision. Any person with a permit
14 issued under Section 22.51 of this Act who is found to have
15 violated that permit or any person who is found to have
16 violated Section 22.51a of this Act shall pay a civil
17 penalty of \$500 for each violation of each such provision,
18 plus any hearing costs incurred by the Board and the
19 Agency, except that the civil penalty amount shall be
20 \$1,000 for each violation of any provision of Section 22.51
21 that is the person's second or subsequent adjudicated
22 violation of that provision. The penalties shall be
23 deposited into the Environmental Protection Trust Fund, to
24 be used in accordance with the provisions of the
25 Environmental Protection Trust Fund Act; except that if a
26 delegated unit of local government issued the

1 administrative citation, 50% of the civil penalty shall be
2 payable to the unit of local government.

3 (b.5) In lieu of the penalties set forth in subsections (a)
4 and (b) of this Section, any person who fails to file, in a
5 timely manner, toxic chemical release forms with the Agency
6 pursuant to Section 25b-2 of this Act shall be liable for a
7 civil penalty of \$100 per day for each day the forms are late,
8 not to exceed a maximum total penalty of \$6,000. This daily
9 penalty shall begin accruing on the thirty-first day after the
10 date that the person receives the warning notice issued by the
11 Agency pursuant to Section 25b-6 of this Act; and the penalty
12 shall be paid to the Agency. The daily accrual of penalties
13 shall cease as of January 1 of the following year. All
14 penalties collected by the Agency pursuant to this subsection
15 shall be deposited into the Environmental Protection Permit and
16 Inspection Fund.

17 (c) Any person that violates this Act, any rule or
18 regulation adopted under this Act, any permit or term or
19 condition of a permit, or any Board order and causes the death
20 of fish or aquatic life shall, in addition to the other
21 penalties provided by this Act, be liable to pay to the State
22 an additional sum for the reasonable value of the fish or
23 aquatic life destroyed. Any money so recovered shall be placed
24 in the Wildlife and Fish Fund in the State Treasury.

25 (d) The penalties provided for in this Section may be
26 recovered in a civil action.

1 (e) The State's Attorney of the county in which the
2 violation occurred, or the Attorney General, may, at the
3 request of the Agency or on his own motion, institute a civil
4 action for an injunction, prohibitory or mandatory, to restrain
5 violations of this Act, any rule or regulation adopted under
6 this Act, any permit or term or condition of a permit, or any
7 Board order, or to require such other actions as may be
8 necessary to address violations of this Act, any rule or
9 regulation adopted under this Act, any permit or term or
10 condition of a permit, or any Board order.

11 (f) The State's Attorney of the county in which the
12 violation occurred, or the Attorney General, shall bring such
13 actions in the name of the people of the State of Illinois.
14 Without limiting any other authority which may exist for the
15 awarding of attorney's fees and costs, the Board or a court of
16 competent jurisdiction may award costs and reasonable
17 attorney's fees, including the reasonable costs of expert
18 witnesses and consultants, to the State's Attorney or the
19 Attorney General in a case where he has prevailed against a
20 person who has committed a wilful, knowing or repeated
21 violation of this Act, any rule or regulation adopted under
22 this Act, any permit or term or condition of a permit, or any
23 Board order.

24 Any funds collected under this subsection (f) in which the
25 Attorney General has prevailed shall be deposited in the
26 Hazardous Waste Fund created in Section 22.2 of this Act. Any

1 funds collected under this subsection (f) in which a State's
2 Attorney has prevailed shall be retained by the county in which
3 he serves.

4 (g) All final orders imposing civil penalties pursuant to
5 this Section shall prescribe the time for payment of such
6 penalties. If any such penalty is not paid within the time
7 prescribed, interest on such penalty at the rate set forth in
8 subsection (a) of Section 1003 of the Illinois Income Tax Act,
9 shall be paid for the period from the date payment is due until
10 the date payment is received. However, if the time for payment
11 is stayed during the pendency of an appeal, interest shall not
12 accrue during such stay.

13 (h) In determining the appropriate civil penalty to be
14 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or
15 (b) (5) of this Section, the Board is authorized to consider any
16 matters of record in mitigation or aggravation of penalty,
17 including but not limited to the following factors:

18 (1) the duration and gravity of the violation;

19 (2) the presence or absence of due diligence on the
20 part of the respondent in attempting to comply with
21 requirements of this Act and regulations thereunder or to
22 secure relief therefrom as provided by this Act;

23 (3) any economic benefits accrued by the respondent
24 because of delay in compliance with requirements, in which
25 case the economic benefits shall be determined by the
26 lowest cost alternative for achieving compliance;

1 (4) the amount of monetary penalty which will serve to
2 deter further violations by the respondent and to otherwise
3 aid in enhancing voluntary compliance with this Act by the
4 respondent and other persons similarly subject to the Act;

5 (5) the number, proximity in time, and gravity of
6 previously adjudicated violations of this Act by the
7 respondent;

8 (6) whether the respondent voluntarily self-disclosed,
9 in accordance with subsection (i) of this Section, the
10 non-compliance to the Agency; and

11 (7) whether the respondent has agreed to undertake a
12 "supplemental environmental project," which means an
13 environmentally beneficial project that a respondent
14 agrees to undertake in settlement of an enforcement action
15 brought under this Act, but which the respondent is not
16 otherwise legally required to perform.

17 In determining the appropriate civil penalty to be imposed
18 under subsection (a) or paragraph (1), (2), (3), or (5) of
19 subsection (b) of this Section, the Board shall ensure, in all
20 cases, that the penalty is at least as great as the economic
21 benefits, if any, accrued by the respondent as a result of the
22 violation, unless the Board finds that imposition of such
23 penalty would result in an arbitrary or unreasonable financial
24 hardship. However, such civil penalty may be off-set in whole
25 or in part pursuant to a supplemental environmental project
26 agreed to by the complainant and the respondent.

1 (i) A person who voluntarily self-discloses non-compliance
2 to the Agency, of which the Agency had been unaware, is
3 entitled to a 100% reduction in the portion of the penalty that
4 is not based on the economic benefit of non-compliance if the
5 person can establish the following:

6 (1) that the non-compliance was discovered through an
7 environmental audit or a compliance management system
8 documented by the regulated entity as reflecting the
9 regulated entity's due diligence in preventing, detecting,
10 and correcting violations;

11 (2) that the non-compliance was disclosed in writing
12 within 30 days of the date on which the person discovered
13 it;

14 (3) that the non-compliance was discovered and
15 disclosed prior to:

16 (i) the commencement of an Agency inspection,
17 investigation, or request for information;

18 (ii) notice of a citizen suit;

19 (iii) the filing of a complaint by a citizen, the
20 Illinois Attorney General, or the State's Attorney of
21 the county in which the violation occurred;

22 (iv) the reporting of the non-compliance by an
23 employee of the person without that person's
24 knowledge; or

25 (v) imminent discovery of the non-compliance by
26 the Agency;

1 (4) that the non-compliance is being corrected and any
2 environmental harm is being remediated in a timely fashion;

3 (5) that the person agrees to prevent a recurrence of
4 the non-compliance;

5 (6) that no related non-compliance events have
6 occurred in the past 3 years at the same facility or in the
7 past 5 years as part of a pattern at multiple facilities
8 owned or operated by the person;

9 (7) that the non-compliance did not result in serious
10 actual harm or present an imminent and substantial
11 endangerment to human health or the environment or violate
12 the specific terms of any judicial or administrative order
13 or consent agreement;

14 (8) that the person cooperates as reasonably requested
15 by the Agency after the disclosure; and

16 (9) that the non-compliance was identified voluntarily
17 and not through a monitoring, sampling, or auditing
18 procedure that is required by statute, rule, permit,
19 judicial or administrative order, or consent agreement.

20 If a person can establish all of the elements under this
21 subsection except the element set forth in paragraph (1) of
22 this subsection, the person is entitled to a 75% reduction in
23 the portion of the penalty that is not based upon the economic
24 benefit of non-compliance.

25 (j) In addition to an other remedy or penalty that may
26 apply, whether civil or criminal, any person who violates

1 Section 22.52 of this Act shall be liable for an additional
2 civil penalty of up to 3 times the gross amount of any
3 pecuniary gain resulting from the violation.

4 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;
5 95-331, eff. 8-21-07.)".

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.

1
2
3
4
5
6
7
8
9
10
11

INDEX

Statutes amended in order of appearance

415 ILCS 5/3.160 was 415 ILCS 5/3.78 and 3.78a
415 ILCS 5/3.202 new
415 ILCS 5/3.442 new
415 ILCS 5/21 from Ch. 111 1/2, par. 1021
415 ILCS 5/22.51
415 ILCS 5/22.51a new
415 ILCS 5/22.54 new
415 ILCS 5/31.1 from Ch. 111 1/2, par. 1031.1
415 ILCS 5/42 from Ch. 111 1/2, par. 1042